



Administrative Policies and Procedures: 11.8

Subject: Appeal Rights For DCS-Administered Tenn Care Services as Identified in the Permanency Plan

Supersedes: DYD 17.14 (6-1-94) and
Program Standards 1.3 section IIB

Local Policy: No
Local Procedures: No
Training Required: No

Approved by:

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Application

To All Department of Children's Services Program Operations Employees, DCS Community Residential Facility Employees, Youth Development Center and Tennessee Preparatory School Superintendents and Youth Development Center Treatment Managers.

Authority: TCA 37-5-106; Grier vs. Wadley, 79-31-7, 7/31/2000

Policy

This policy shall apply to DCS children/youth in custody who are receiving DCS-administered TennCare services.

DCS-administered TennCare services are any DCS contracted agency services that includes Level I contract agency foster homes, residential and continuum services and services received by youth at Tennessee Preparatory School. It also includes all Level II services and services received by youth in DCS community residential facilities (group homes) and when a staffing is held for a youth in a Youth Development Center for step-down to a DCS community residential facility. It does not include any services for children/youth in DCS foster homes or services for youth in youth development centers.

This policy also addresses the procedure for filing appeals on behalf of DCS custody children upon receipt of a *Notice of Adverse Action* from the MCO or BHO.

A child/youth (age 14 or older) and/or his/her parents, guardian, foster parent, child's attorney or guardian ad litem (GAL), the Advocacy Contractor, provider, or other advocate shall be allowed to appeal the denial, delay, reduction, suspension, or discontinuation of DCS-administered TennCare services, as identified in the Permanency Plan or the *Notice of Action*.

Procedures

A. Notification of the right to appeal services

1. At each staffing when a child/youth's level of service changes, the staffing team leader will inform the child/youth (age 14 or older) and others present at the staffing (parent, guardian, foster parent, child's attorney or guardian ad litem (GAL), the Advocacy Contractor, provider, or other advocate) of their right to appeal the denial, delay, reduction, suspension, or discontinuation of DCS-administered TennCare services provided for in the Permanency Plan.
2. A *Notice of Action* form and a *TennCare Medical Care Appeal* Form shall be provided to the child/youth (age 14 or older), parent, guardian, foster parent, child's attorney or guardian ad litem (GAL), the Advocacy Contractor, provider and other advocate. If those parties referenced above are not present at the staffing a copy of the *Notice of Action* and *TennCare Medical Care Appeal* form shall be mailed to them within two (2) working days of the staffing.
3. If, at the staffing, an individual expresses an intent to appeal the DCS-administered TennCare Services contained in the Permanency Plan, the staffing team leader will make a note on the *Notice of Action* form identifying the individual and their expressed intent to file an appeal. The *Notice of Action* will then be mailed to the following (if not present at the staffing):
 - ◆ the child's current caregiver
 - ◆ the Advocacy Contractor
 - ◆ where appropriate, the child's biological parent.
4. If, following a staffing, additional services are requested or concerns are identified regarding the child's level of service, the DCS case manager will arrange for a subsequent staffing to be held within ten (10) working days.
5. If an individual requests a service on behalf of a DCS child that requires a prompt response in light of the child's condition and the urgency of his need, as defined by a prudent layperson, and, under the circumstances, there is not sufficient time to hold a staffing, then the child's caseworker shall promptly respond to the individual's request without holding a staffing. If DCS denies the requested service then, within two (2) days of responding to the individual's request, a *Notice of Action* shall be mailed to the child/youth (age 14 or older), parent, guardian, foster parent, child's attorney or guardian ad litem (GAL), the Advocacy Contractor, provider, and other advocate. (This is not intended to replace or affect provider manual policy

requirements regarding disruption staffings for DCS contracted providers).

6. The *Notice of Action* will contain a provision indicating when the expected service will be provided.
7. The *Notice of Action* shall state that a delay of service is appealable.
8. In the event that a staffing is not held and the Resource Management Unit deauthorizes a DCS-administered TennCare service, a *Notice of Action* setting forth the following must be sent a minimum of ten (10) days prior to the action: the date the service will be reduced or discontinued (e.g., suspended, terminated), the type and amount of services at issue, and a statement of reasons for the proposed action. (This does not otherwise change provider manual policy requirements of forty-five (45) days prior notice to allow for discharge planning).
9. In the event that a staffing is not held and DCS otherwise denies or discontinues a DCS-administered TennCare service, a *Notice of Action* setting forth the nature of the adverse action, the type and amount of services at issue, and a statement of reasons for the proposed action must be provided to those individuals listed in Item 2 a minimum of ten (10) days prior to the action.
10. Those receiving a *Notice of Action* may appeal the action by filing a *TennCare Medical Care Appeal* form, which will be sent to the TennCare Solutions Team. Appeals must be made to the TennCare Solutions Team within thirty (30) days of the notice to deny, delay, reduce, suspend or discontinue. See *Section C* on Appeals Process and *Section G* on Continuation of Services During Appeal.

**B. Advocacy
Contractor**

1. Following the initial staffing, a copy of the child's Permanency Plan and a *Notice of Action* will be faxed or mailed to the Advocacy Contractor within two (2) days of the staffing. Following all subsequent staffings, a copy of the *Notice of Action* will be faxed or mailed to the Advocacy Contractor within two (2) days of the staffing, unless the Permanency Plan has been revised, in which case the Advocacy Contractor will additionally be faxed or mailed a copy of the revised Permanency Plan.
2. The *Notice of Action* form shall include a Staffing Summary.
3. The Advocacy Contractor may request any additional

assessment information as needed to determine if an appeal needs to be filed to effectuate the rights of the child.

4. The Advocacy Contractor will conduct a substantive review of procedures followed and services rendered, and will monitor implementation of the determined services and may file an appeal as needed to effectuate the rights of the child.

C. Appeals Process

1. When an appeal regarding the denial, delay, reduction, suspension, or discontinuation of services is filed with the TennCare Solutions Team, the Solutions Team will immediately notify by fax the Regional Administrator of the appropriate region.
2. The Regional Administrator/designee shall have five (5) calendar days if the appeal is urgent. An urgent appeal is one that, in the opinion of a prudent layperson would, under the circumstances, require a prompt response. If an appeal is marked "urgent," it must be treated as an urgent appeal unless the child's provider certifies in writing that the child does not need urgent care. If not urgent, the Regional Administrator/designee shall have fourteen (14) calendar days from the date the appeal was received by the Regional Administrator to respond. During this period, the services most recently identified as appropriate for the child/youth will be continued. Three options are available to the Regional Administrator /designee:
 3. deny the appeal and continue to follow the existing course of action
 4. approve the appeal and implement the action requested in the appeal, or
 5. during the period negotiate a different service plan that is acceptable to the appealing party and the department.
6. The Regional Administrator/designee shall notify the TennCare Solutions Team in writing of his/her decision. If the TennCare Solutions Team is not notified in the prescribed time period, the service is deemed approved and must be provided unless deemed medically contraindicated by the DCS consulting medical director.
7. The TennCare Solutions Team shall review the decision of the Regional Administrator/designee. If the Solutions Team does not concur with the response of the Regional Administrator/designee the Solutions Team may direct the Commissioner of the Department of Children's Services to take specific action. The TennCare Solutions Team will copy the Regional Administrator/designee with a copy of

the directive.

8. If the Solutions Team concurs with the decision of the Regional Administrator/designee and no change in service is ordered the appeal will be set for a hearing. The Department of Health will schedule an administrative hearing and shall notify all involved parties of the hearing date. If the appealing party wishes to opt out of the hearing process the appealing party must provide such waiver in writing. If agreement regarding services has not been reached and the hearing is scheduled the parties may nevertheless continue to seek resolution of the appeal.
9. If the service issues have not been resolved the matter will proceed to the hearing and an administrative law judge will make a decision. The initial administrative order resulting from such hearing must be rendered within ninety (90) days from the request for the hearing.
10. When an appeal, whether as a result of an agreement by the parties, a TennCare Solutions Team directive, or an administrative hearing, results in the need to change the Permanency Plan a new plan shall be developed and, where appropriate, submitted to the court for approval.

**D. Tennessee
Association of
Legal Services**

1. If legal counsel does not otherwise represent the child/youth, DCS will authorize an attorney to represent the child/youth at the administrative hearing.
2. Within twelve (12) hours of receiving notice from the Solutions Team that it concurs with the decision of the Regional Administrator/designee, or within twelve (12) hours of DCS receiving notice that the appeal has been scheduled for an administrative hearing, DCS shall send a copy of such notice to the Legal Contractor.
3. The Legal Contractor may request any additional assessment information as needed to provide legal representation and to otherwise effectuate the rights of the child/youth.
4. DCS employees shall reasonably cooperate with the Legal Contractor in providing records and testimony as reasonably needed by the Legal Contractor to provide legal representation and to otherwise effectuate the rights of the child/youth.

**E. Continuum
Providers**

1. Consistent with Section C, Appeals Process, upon receiving notice of a denial, delay, reduction, suspension or discontinuation of services by the MCO or BHO regarding a

custodial child, the continuum provider shall notify the child/youth's Residential Case Manager or the regional TennCare Representative. DCS shall then file an appeal in accordance with the provisions of Section H on Appeal of MCO/BHO Services.

2. In urgent circumstances, or in other appropriate circumstances in which the continuum provider files the TennCare appeal, the continuum provider shall mail or fax a copy of the appeal to the Residential Case Manager or the regional DCS TennCare Representative.
3. Continuum providers shall mail Monthly Treatment Reports, within five (5) days of completion, with a *Notice of Action* and *TennCare Medical Care Appeal* Form, to the DCS Case Manager, an Involved Adult, and the Advocacy Contractor.
4. Continuum providers shall mail or fax Type A Incident Reports, within forty-eight (48) hours of the incident, with a *Notice of Action* and *TennCare Medical Care Appeal* form, to the DCS Case Manager, an Involved Adult, and the Advocacy Contractor. (This policy does not otherwise alter DCS policy regarding disruption staffings).
5. When continuum providers reduce, delay or suspend services to children/youth who are transitioning to home, who have been at home, or who are otherwise no longer in custody, a *Notice of Action* and *TennCare Medical Care Appeal* form shall be mailed by the continuum provider to the DCS Case Manager, the Involved Adult, and the Advocacy Contractor.
6. Continuum providers shall mail, a minimum of ten (10) days prior to discontinuing services to a child/youth who is no longer in physical custody, a *Notice of Action* and *TennCare Medical Care Appeal* Form to the child/youth's physical guardian.

**F. Additional
Enhanced
Services**

1. When outpatient mental health visits for a child/youth in custody have been requested (such as services exceeding the 45 visits provided by the BHO plan), and DCS deauthorizes or denies such services; a *Notice of Action* setting forth the reason for denial or deauthorization and the date of deauthorization must be sent to those individuals listed in item 2 above ten (10) days prior to the action.
2. A copy of the *TennCare Medical Care Appeal* Form must be mailed with the Notice.

**G. Continuation of
Services During
Appeal**

1. If an appeal regarding a change in a child's/youth's level of care is made within ten (10) days of the staffing, the change in services shall not be implemented until the appeal is resolved unless, in the opinion of the DCS consulting medical director, delaying the change in level of service is medically contraindicated.
2. If, at any staffing, a higher level of service is determined to be needed and an appeal is received requesting a lower level of service, and the child/youth, on an emergency basis, requires services of the higher level, the service of the higher level will be implemented and provided until the appeal is resolved.
3. If an appeal is received from a DCS contracted provider requesting a continuation of stay for residential care, and all other interested parties have determined that the child should go to a different level of care or have the services discontinued, DCS will have its consulting medical director review the case. If the consulting medical director certifies the child's treatment needs will not be jeopardized, the proposed transfer may continue and DCS will authorize an attorney to represent the child at the administrative hearing. Services will be reinstated if determined to be medically necessary and in the best interest of the child. Nothing else in this paragraph supersedes the child's right to refuse services.

**H. Non-TennCare
Permanency
Issues**

The case manager shall resolve Permanency Plan issues that do not pertain to DCS-administered TennCare services. If the case manager cannot resolve these issues, the case manager's supervisor may be involved. If these issues cannot be resolved by discussions with the case manager or supervisor they may be brought to the attention of the foster care review board or before the court.

**I. Appeal of
MCO/BHO
Services**

1. Children/youth in DCS custody receive DCS-administered TennCare services through the MCO/BHO. DCS case managers should access DCS-administered TennCare services through the MCO/BHO for children as needed or appropriate. If technical assistance is needed, they should contact the DCS regional Health Unit.
2. For children in DCS custody, MCO/BHO Notices of Adverse Action will be mailed to the Home County Case

Manager.¹ The Home County Case Manager shall send the notice to the regional TennCare Representative. The regional TennCare Representative shall file an appeal. The Residential Case Manager shall provide a copy of the appeal to the child's current caregiver; the current caregiver is defined as the person who has physical possession of the child. The Home County Case Manager will provide a copy of the appeal to any involved party.

3. If the DCS case manager is aware of an adverse action, and receives no notice from the MCO/BHO, the case manager will contact the regional TennCare Representative. If no notice of the adverse action is received DCS will file an appeal on behalf of the child.

**J. Retaliatory
Actions
Prohibited**

Individuals involved with children/youth in care are encouraged to exercise their right to appeal. DCS employees are strictly prohibited, under any circumstances, from taking any action or threatening to take any action whatsoever against an individual based upon that individual's filing of an appeal.

Forms: (The forms listed below are not DCS forms but are forms mandated by the court. They are being provided as auxiliary forms and are in "Novell-delivered applications - DCS Forms.)

Notice of Action

TennCare Medical Care Appeal Form

Collateral Documents

Case Manager Manual

Standards

None

¹ When a custody child is enrolled in TennCare, or when the child comes into custody, the child's name and the address of the home county case manager are put on the TennCare file.

Glossary

<i>Term</i>	<i>Definition</i>
<i>Advocacy contractor:</i>	A contracted advocacy agency that assists children in DCS custody in exercising their right to appeal TennCare services.
<i>An involved adult:</i>	Is defined as a biological relative, or a present or former foster parent, who is identified as being currently involved in the child's life, such that is appropriate for that adult to contribute to decision-making regarding the child's care.
<i>Legal contractor:</i>	An agency that provides legal representation for DCS custody children whose appeals results in administrative hearings.